

REMARKS

No claims have been added or cancelled. Claims 1-40 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Section 103(a) Rejection:

The Office Action rejected claims 1-6, 8-14, 16-18, and 21-28 under 35 U.S.C. § 103(a) as being unpatentable over Teodosiu et al. (U.S. Publication 2002/0062375) (hereinafter “Teodosiu”) in view of Badovinatx et al (U.S. Patent 5,896,503) (hereinafter “Badovinatx”), and claims 7, 15, 19, 20, and 22 under 35 U.S.C. § 103(a) as being unpatentable over Teodosiu and Badovinatx in view of Northrup (U.S. Patent 6,671,746). The Office Action rejected claims 29-40 based on the same rationale as claims 1-28. Applicants respectfully traverse these rejections for at least the following reasons.

First, the rejection is improper because the Examiner has not shown that Teodosiu qualifies as a prior art reference. More specifically, Teodosiu is a published U.S. patent application that was filed on Sep. 13, 2001, after Applicants’ priority date of Jan. 22, 2001. Teodosiu does claim the benefit of two provisional applications both filed Nov. 22, 2000. However, the Nov. 22, 2000 filing date can only be used as Teodosiu’s 35 U.S.C. § 103(a) prior art date for the subject matter that is common to both the published application and the provisional application. Since it is common practice for a later filed utility application to include more or different subject matter than its earlier provisional application, it is unclear whether the material in Teodosiu relied upon by the Examiner was actually present in Teodosiu’s provisional application. **In fact, examination of Teodosiu’s two provisional applications shows that they vary greatly from Teodosiu’s published utility application.** It is not apparent that the subject matter on which the Examiner is relying on to reject Applicants’ claims is also present in one of Teodosiu’s provisional applications. Unless the Examiner can make this showing, the rejection is improper. *See, In re Wertheim*, 209 USPQ 554 (CCPA 1981).

Moreover, Teodosiu's published application is not entitled to the Nov. 22, 2000 date as a section 103(a) prior art date unless at least one claim of Teodosiu's published application is supported (under 35 U.S.C. § 112) in the provisional application. Under 35 U.S.C. 119(e)(1), a published utility application is not entitled to its provisional application's filing date as a prior art date unless at least one claim of the published utility application is supported (per 35 U.S.C. § 112) in the provisional application. Since both of Teodosiu's provisional applications are much shorter informal papers as compared to Teodosiu's utility application, it is not at all clear that either one of Teodosiu's provisional applications provide full 35 U.S.C. § 112 support for any of the claims of Teodosiu's published utility application. The rejection is improper unless the Examiner can show that Teodosiu's published application has the necessary claim support in the provisional application to be entitled to the provisional application's filing date as its § 103(a) prior art date. *See also* M.P.E.P. § 2136.03(IV).

The Examiner has the burden of proof to produce the factual basis for the rejection. *In re Warner*, 154 USPQ 173, 177 (C.C.P.A. 1967), *cert. denied*, 389 U.S. 1057 (1968). Since the Examiner has not proven that both of the above requirements have been met for Teodosiu's teachings to qualify as prior art, the Examiner has not met this burden of proof and the rejection is improper.

Furthermore, in regard to claim 1, the Examiner admits that Teodosiu "fails to teach at least a subset of the peer nodes are configured to participate in a peer membership protocol for joining or forming a peer group with other peer nodes." The Examiner goes on to state that it would have been obvious to "combine Teodosiu's peer computing system with Badovinatz's management of membership of a domain of processors, for the advantage of maintaining high service availability by recovering the main source of service as quickly as possible." However, Applicants remind the Examiner that "to support the conclusion that the claimed combination is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed combination or the examiner must present a convincing line of reasoning as to

why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references..." *Ex Parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Int'f 1985).

Applicants note that Badovinatz does not mention peer-to-peer networking at all. Since the Examiner admits that Teodosiu does not teach the subject functionality, it is incumbent upon the Examiner to "present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." However, Badovinatz only describes a mechanism for managing membership of a domain of processors in a distributed computing environment. Nowhere does Badovinatz "expressly or impliedly" suggest that this mechanism should be used in a peer computing system to enable peer nodes to participate in a peer membership protocol for joining or forming a peer group with other peer nodes. The Examiner states that it would have been obvious to combine Teodosiu's peer computing system with Badovinatz's management of membership of a domain of processors for the advantage of "maintaining high service availability by recovering the main source of service as quickly as possible." However, nowhere does Teodosiu or Badovinatz "expressly or impliedly" suggest that "maintaining high service availability by recovering the main source of service as quickly as possible" would apply in a peer computing system. In fact, by their very nature peer computing systems typically seek to avoid a "main source of service".

Applicants respectfully assert that "maintaining high service availability by recovering the main source of service as quickly as possible" is not commensurate with the suggested combination of Teodosiu's "peer computing system" and Badovinatz's mechanism. Further, as Badovinatz teaches a mechanism that provides the cited advantage (for processors in a distributed computing environment), the Examiner provides no motivation to combine Teodosiu's "peer computing system" and Badovinatz's mechanism to obtain the cited advantage. Applicants therefore respectfully assert that the Examiner's "line of reasoning" that combining Teodosiu's "peer computing system" with Badovinatz's mechanism "for the advantage of maintaining high

service availability by recovering the main source of service as quickly as possible” is not a convincing line of reasoning as to why the claimed invention would have been obvious in light of the teachings of the references.

Thus, for at least the reasons presented above, the rejection of claim 1 is not supported by the cited prior art and removal thereof is respectfully requested. Similar remarks as those above regarding claim 1 also apply to claims 5, 12, 13 and 18.

Regarding claim 6, contrary to the Examiner’s assertion, Teodosiu fails to disclose a peer computing system wherein one or more peer nodes in said peer group are configured to participate in a peer resolver protocol configured for use in sending search queries from one peer group member to another peer group member. Examiner cites Teodosiu, paragraph [0094], which in part states:

...external network traffic 125 is received by gate server 120. Gate server 120 can resolve resource addresses and instruct the senders on how to query the resource locator, or gate server 120 can resolve resource addresses and access the resources on behalf of the senders.

Note also that in Teodosiu, paragraph [0039], the functionality of gate server 120 of FIG. 1 is described:

[0039] For a client device outside realm 150, external network traffic 125 is directed to realm 150 through gate server 120. Gate server 120, possibly in cooperation with registrar 110 and one or more RNS servers 130, determines one or more peer locations 140 within realm 150 where the resource is expected to be available, in accordance to the resource location process described above. Depending on whether the client device is compatible with the peer(s) hosting the resource, gate server 120 may simply respond with the location(s) and allow the client device to directly access the resource on its own. If the client device is not compatible, gate server 120 may take any number of actions, such as accessing the resource on behalf of the client device and responding as if the gate server were the resource.

Note that, in Figure 1 of Teodosiu, realm 150 is where the peers 140 disclosed by Teodosiu reside, and that the client devices are described as being outside realm 150. In paragraph [0094] and elsewhere, Teodosiu discloses a gate server that can receive external network traffic from client devices external to the “realm”, resolve resource addresses, and either instruct the external senders (client devices) on how to query the resource locator, or alternatively access the resources on behalf of the senders. As Teodosiu teaches in [0094] and elsewhere that the gate servers resolve resource addresses for external network traffic from external senders (client devices), it is clear that the gate server disclosed by Teodosiu is not analogous to a peer resolver protocol configured for use in sending search queries from one peer group member to another peer group member.

Thus, for at least the reasons presented above, the rejection of claim 6 is not supported by the cited prior art and removal thereof is respectfully requested. Similar remarks as those above regarding claim 6 also apply to claims 14 and 21.

Regarding claim 8, contrary to the Examiner’s assertion, Teodosiu fails to disclose a peer computing system, wherein one or more peer nodes in said peer group are configured to participate in an endpoint routing protocol for enabling the peer nodes to request peer routing information to reach other peer nodes. Applicants note that the Examiner asserts that, in FIG. 2 and paragraph [0044], Teodosiu teaches “locating resources; therefore peers have to know peer routing information to locate resources.” Applicants respectfully disagree with the statement that “peers have to know peer routing information to locate resources.” Teodosiu clearly does not teach or suggest that, to locate resources, peers have to know peer routing information. Instead, Teodosiu, in paragraphs [0036] and [0037], discloses in reference to FIG. 1 a Resource Naming Service (RNS) server that receives a request for a resource from a peer, attempts to determine a location or locations for the resource and, if a location or locations for the resource are found, returns the location(s) to the requesting peer, which then is responsible for accessing the resource at (one of the) returned location(s). Teodosiu does not teach in this citation or elsewhere that the RNS server enables the peer nodes to

request peer routing information to reach other peer nodes. Instead, Teodosiu teaches that the RNS server returns location(s) for a requested resource to the requesting peer, which is then responsible for accessing the resource at the provided location(s). Note that this does not imply that the peer “has to know” peer routing information to access the resource at a provided location. Moreover, to locate a resource, Teodosiu teaches that a peer sends a request to an RNS server (which is not a peer, and thus sending a message to the RNS server would not require knowledge of “peer routing information”), which returns a location or locations for the resource. Teodosiu does not teach or suggest that the peer “has to know” peer routing information to send a message requesting a resource location to the RNS server.

Thus, for at least the reasons presented above, the rejection of claim 8 is not supported by the cited prior art and removal thereof is respectfully requested. Similar remarks as those above regarding claim 8 also apply to claims 16 and 23.

Regarding claim 9, contrary to the Examiner’s assertion, Teodosiu fails to disclose in paragraph [0035] a peer computing system, wherein at least a subset of the peer nodes are configured to participate in a peer information protocol for enabling the peer nodes to learn about other peer nodes’ capabilities and status. Paragraph [0035] of Teodosiu states:

Each RNS server 130 tracks the current network location (in terms of IP addresses and IP port numbers) and status (on- or off-line) of all peers assigned to that RNS server, as well as the locations and availability of resources among its assigned peers.

Applicant fails to see where, in the cited paragraph or elsewhere, Teodosiu teaches or suggests that an RNS server enables peer nodes to learn about other peer nodes’ capabilities and status.

Thus, for at least the reasons presented above, the rejection of claim 9 is not supported by the cited prior art and removal thereof is respectfully requested. Similar remarks as those above regarding claim 9 also apply to claims 17 and 24.

The Office Action rejected claims 7, 15, 19, 20, and 22 under 35 U.S.C. § 103(a) as being unpatentable over Teodosiu and Badovinatz in view of Northrup. With regard to claim 7, the Examiner asserts that Teodosiu “fails to teach one or more peer nodes in said peer group are configured to participate in a pipe binding protocol configured for use in finding the physical location of a pipe endpoint and binding to the pipe endpoint.” The Office Action goes on to state that it would have been obvious to “combine Teodosiu’s peer computing system with Northrup’s Binder Service, for the advantage of easing Minor Services of interest to the Application Program without the altering the Application Program.” Since the Office Action states that Teodosiu does not teach the subject functionality, it is incumbent upon the Examiner to “present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.” Applicants note that Northrup does not mention peer-to-peer networking at all. Further, nowhere does Teodosiu “expressly or impliedly” suggest “easing Minor Services of interest to the Application Program without the altering the Application Program” as an advantage for peers in a peer computing system.

Applicants respectfully assert that “easing Minor Services of interest to the Application Program without the altering the Application Program” is not commensurate with the suggested combination of Teodosiu’s “peer computing system” and Northrup’s Binder Service. Further, as Northrup teaches a Binder Service that provides the cited advantage, the Examiner provides no motivation to combine Teodosiu’s “peer computing system” and Northrup’s Binder Service to obtain the cited advantage. Applicants therefore respectfully assert that the Examiner’s “line of reasoning” that combining Teodosiu’s “peer computing system” with Northrup’s Binder Service “for the advantage of easing Minor Services of interest to the Application Program without the altering the

Application Program” is not a convincing line of reasoning as to why the claimed invention would have been obvious in light of the teachings of the references.

Thus, for at least the reasons presented above, the rejection of claim 7 is not supported by the cited prior art and removal thereof is respectfully requested. Similar remarks as those above regarding claim 7 also apply to claims 15, 19, 20 and 22.

Applicants note that the Examiner states that claims 29-40 “do not teach any features above and beyond the system claims in claims 1-28”, and rejected claims 29-40 based on the same rationale as claims 1-28. **Applicants submit, however, that Applicants’ claims 29-40 have a different scope than claims 1-28 and, as the Examiner has failed to address the differences between the claims, the Examiner’s rejection of claims 29-40 is improper.** The following is an example of such differences that the Examiner fails to address in claims 29 and 38:

[a] peer node broadcasting a peer discovery message on the peer-to-peer network.

The following is another example of such differences that the Examiner fails to address in claims 30, 35, 39 and 40:

[a] peer node broadcasting a peer group discovery message on the peer-to-peer network.

Applicants also assert that numerous ones of the dependent claims recite further distinctions over the cited art. However, since the rejections have been shown to be unsupported for the independent claims, a further discussion of the dependent claims is not necessary at this time.

CONCLUSION

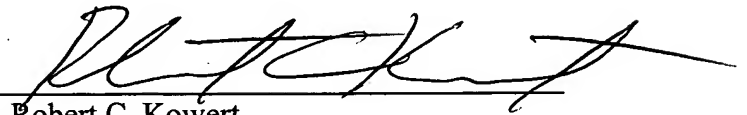
Applicants submit the application is in condition for allowance, and an early notice to that effect is respectfully requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicants hereby petition for such an extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5181-82104/RCK.

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☐ Petition for Extension of Time
- ☐ Notice of Change of Address
- ☐ Fee Authorization Form authorizing a deposit account debit in the amount of \$
for fees ().
- ☐ Other:

Respectfully submitted,



Robert C. Kowert
Reg. No. 39,255
ATTORNEY FOR APPLICANT(S)

Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C.
P.O. Box 398
Austin, TX 78767-0398
Phone: (512) 853-8850

Date: July 5, 2005